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WILMER CUTLER PICKERING HALE AND DORR LLP 399 PARK AVENUE NEW YORK, NY 10022			VAN DOREN, BETH	
			ART UNIT	PAPER NUMBER

3623

DATE MAILED: 11/29/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/888,004

Applicant(s)

PITTELLI, PATRICK

Examiner

Beth Van Doren

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 18 November 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-5, 7-17 and 20-27 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-5, 7-17 and 20-27 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

1. The following is a non-final office action in response to communications received 11/08/2004. Claims 10 and 22 have been amended. Claims 1-5, 7-17, and 20-27 are pending in this application.

Response to After Final Amendment/Remarks

2. Applicant's after final arguments have been considered and are found to be persuasive. Therefore, the finality has been withdrawn and the following non-final office action has been established.

Claim Rejections - 35 USC § 101

3. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

4. Claims 1-5, 7-8, and 27 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

The basis of this rejection is set forth in a test of whether the invention is within the technological arts. For a claimed invention to be statutory, the claimed invention must be within the technological arts. Mere ideas that do not apply, involve, use, or advance the technological arts fail to promote the "progress of science and the useful arts" (i.e. the physical sciences as opposed to social sciences, for example) and therefore are found to be non-statutory subject matter.

In the present case, the recited process must somehow apply, involve, use, or advance the technological arts. Claim 1 does not specifically recite in the body of the claim which specific steps actively involve the technological arts, such as the use of a computer to perform a recited

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step. As currently recited, the receiving, determining, identifying, and providing of the claim can be performed manually and without the use of any technology. Independent claim 27 and dependent claims 2-5 and 7-8 contain the same deficiencies. Therefore, since the steps of these claims do not apply, involve, use, or advance a technological art, it is respectfully submitted that the claimed invention is directed towards non-statutory subject matter.

As to the technological arts recited in the specification and the preamble, mere recitation in the specification and preamble or mere implication of employing a machine or article of manufacture to perform some or all of the recited steps does not confer statutory subject matter to an otherwise nonstatutory claim unless there is positive recitation in the body of the claims. In the present case, claim 1 recites "a computer implemented method" in the preamble. However, with no recitation of any technology in the body of the claim, the mere implication of computer implementation in the preamble does not specifically confer active implementation of technology on any of the limitations of the claim. Furthermore, claim 27 contains no recitation, in the body or preamble, of any technological arts. Therefore, it is respectfully submitted that claims 1-5, 7-8, and 27 are directed towards non-statutory subject matter.

Claim Rejections - 35 USC § 102

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claim 10 is rejected under 35 U.S.C. 102(e) as being anticipated by Chacker (U.S. 6,578,008).

6. As per claim 10, Chacker teaches a method for an artist to obtain financial support comprising: receiving and storing on a file server a sample of the artist work (See at least figure 6, column 5, lines 15-35 and 65-67, and column 6, lines 1-10 and 60-67, wherein the sample is received and stored);

evaluating the artist's work from a pool of artists (See at least column 5, lines 15-35 and 50-60, column 6, lines 55-67, column 7, lines 1-25 and 58-67, column 8, lines 1-10, 20-25, and 55-67, and column 9, lines 1-20, wherein the artist's work is evaluated);

selecting an artist based on said artist's work to be eligible for financial contributions from users, wherein the financial contributions are money (See at least column 5, lines 50-60, column 6, lines 55-67, column 7, lines 1-25 and 58-67, column 8, lines 1-10, 20-25, and 55-67, and column 9, lines 1-20, wherein the artist is selected by users as eligible for financial contributions for said user);

establishing a fund of any such contributions for an artist who meets a predefined criteria (See column 5, lines 50-60, column 6, lines 55-67, column 7, lines 1-25 and 58-67, column 8, lines 1-10, 20-25, and 55-67, and column 9, lines 1-20, wherein a fund is established); and

providing users who contributed to artists that did not attain the predefined level of user contributions an option from a group at least comprising:

(a) a refund of their money contribution (See at least column 5, lines 50-60, column 6, lines 55-67, column 7, lines 1-25 and 58-67, column 8, lines 1-10, 20-25, and 55-67, wherein a user can sell there contribution to an artist); and

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(b) a redistribution of their money contribution to another artist from the pool of artists (See at least column 5, lines 50-60, column 6, lines 55-67, column 7, lines 1-25 and 58-67, column 8, lines 1-10, 20-25, and 55-67, wherein a user can trade the contribution to one artist to the account of another artist); and

(c) to leave their money contribution undistributed in a non-artist account (See at least column 7, lines 1-25 and 58-67, column 8, lines 1-10, 20-25, and 55-67, and column 13, lines 29-45, wherein the contributor can sell shares and leave the monies as a balance in his/her portfolio, the monies not yet associated with an artist).

Claim Rejections - 35 USC § 103

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-5, 7-9, 11-17, and 20-27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Chacker (U.S. 6,578,008) in view of Riffage.com. The following references disclose aspects of Riffage.com:

- i. Article "Curtain closes for Riffage.com" by Lee (referred to as reference A).
- ii. Article "Riffage.com picks up indie record label" by Borland (referred to as reference B).
- iii. Article "Bands and fans rub elbows on Riffage.com" by McIntosh (referred to as reference C).

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iv. Screenshot of Riffage.com, dated 10/12/1999, (referred to as reference D).

8. As per claim 1, Chacker teaches a computer-implemented method for determining the market demand for an artist comprising:

receiving user input to determine which artist to select from a pool of artists (See at least column 5, lines 50-60, column 6, lines 55-67, column 7, lines 1-25 and 58-67, column 8, lines 1-10, 20-25, and 55-67, and column 9, lines 1-20, wherein user input determines which artist to select from a pool of artists);

determining the market demand for each said selected artist based on users contributing money to a separate fund for each artist (See at least column 5, lines 50-60, column 6, lines 55-67, column 7, lines 1-25 and 58-67, column 8, lines 1-10, 20-25, and 55-67, and column 9, lines 1-20, which discuss determining the market demand for an artist based on consumers support and contribution to a virtual fund of an artist);

identifying artists that attain a predefined money level of user contributions (See at least column 5, lines 50-60, column 6, lines 55-67, column 7, lines 1-25 and 58-67, column 8, lines 1-10, 20-25, and 55-67, and column 9, lines 1-20, which discusses identifying artists that attain the highest level of support from the consumers (by way of stocks purchased) and offering these artists recording contracts); and

providing users who contributed to artists that did not attain the predefined level of user contributions an option from a group at least comprising:

(a) a refund of their money contribution (See at least column 5, lines 50-60, column 6, lines 55-67, column 7, lines 1-25 and 58-67, column 8, lines 1-10, 20-25, and 55-67, wherein a user can sell there contribution to an artist); and

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(b) a redistribution of their money contribution to another artist from the pool of artists (See at least column 5, lines 50-60, column 6, lines 55-67, column 7, lines 1-25 and 58-67, column 8, lines 1-10, 20-25, and 55-67, wherein a user can trade the contribution to one artist to the account of another artist); and

(c) to leave their money contribution undistributed in a non-artist account (See column 7, lines 1-25 and 58-67, column 8, lines 1-25, and 55-67, and column 13, lines 29-45, wherein the contributor can sell shares and leave the monies as a balance in his/her portfolio, the monies not yet associated with an artist). However, Chacker does not expressly disclose that the funds come directly from the users contributions or that the fund, minus a commission, is provided for the benefit of each artist that attains the predefined money level of user contributions.

Riffage.com discloses a method further comprising making available to each artist attaining a level of user contribution funds, minus a commission, from the user's contribution to the artist to produce and commercialize the artist (See reference C, page 1, sections 3 and 4, and page 2, sections 1 and 4, which discloses giving each artist that attains funds on the site some of the money to produce and commercialize their band).

Both Chacker and Riffage.com disclose a tool that offers an emerging artist financial support based on the users' demand for and contributions to the artist. Chacker discloses that the contributions of the users to the artist are virtual financial contributions upfront, and that after popular artists are signed and given funding. Chacker also discloses the systems ability for billing with real money in column 12, lines 40-55. Riffage.com discloses receiving financial contributions upfront before signing an artist for a record contract and giving the artist monies from these contributions. Therefore, it would have been obvious to one of ordinary in the art at

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the time of the invention to accept non-virtual financial contributions from users in Chacker and provide this money to the artist in order to decrease the costs associated with producing, marketing, and acquiring an artist by receiving the money from the fans of the artist. See at least column 8, lines 1-30, of Chacker.

9. As per 2, Chacker teaches a method wherein said user input is in the form of user votes (See at least column 7, lines 1-25, wherein the users vote).

10. As per claim 3, Chacker discloses a method wherein users contribute to an artist who may attain a predefined level of user contributions, wherein users can earn prizes for contributing the artists, and wherein a user who contributes to an artist who attains a predefined level of user contributions is given an artist profile with a digital download (See at least column 5, lines 50-60, column 6, lines 55-67, column 7, lines 1-25 and 58-67, column 8, lines 1-10, 20-25, and 55-67, and column 9, lines 1-20 and 35-40, wherein users contribute to an artist and when the artist attains a predefined level of contributions, the users who contributed receive an email concerning the artist). However, Chacker and Riffage.com do not expressly disclose supplying these users with a recognition certificate regarding said artist.

Both Chacker and Riffage.com disclose a tool that offers an emerging artist financial support based on the users' demand for and contributions to the artist. Chacker further discloses the importance of making the users of the system feel like part of a community and increase the fun and enjoyment of the system by providing users with the opportunity for prizes as well as the opportunity to launch a new band. See at least column 8, lines 15-30 and 55-67, and column 9, lines 1-10 and 49-60. Providing incentives to participate, such as prizes and gimmicks, is well known in the marketing and sales industry. Therefore, it would be one of ordinary skill in the art

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at the time of the invention to provide the users of Chacker a recognition certificate regarding an artist in order to increase user participation by creating a more community oriented tool and by providing incentives, as is taught in the prior art and known in the art.

11. As per claim 4, Chacker discloses a method wherein users contribute to funds of artists and further comprising making available to each artist attaining a predefined money level of user contribution funds to produce and commercialize the artist (See at least column 9, lines 10-50, wherein artists that reach the predefined criteria of the A&R representatives are afforded record contracts, marketing, etc. by the system). However, Chacker does not expressly disclose that the funds come directly from the users contributions.

Riffage.com discloses a method further comprising making available to each artist attaining a level of user contribution funds from the user's contribution to the artist to produce and commercialize the artist (See reference C, page 1, sections 3 and 4, and page 2, sections 1 and 4, which discloses giving each artist that attains funds on the site some of the money to produce and commercialize their band).

Both Chacker and Riffage.com disclose a tool that offers an emerging artist financial support based on the users' demand for and contributions to the artist. Chacker discloses that the contributions of the users to the artist are virtual financial contributions upfront, and that after popular artists are afforded record contracts the same users would buy the cds and recordings of the artists. Chacker discusses the importance of knowing the popularity of an artist before signing said artist so that the system will be able to make money by said artist in at least column 8, lines 1-30, and the importance of reducing costs. Riffage.com discloses receiving non-virtual financial contributions upfront before signing an artist for a record contract and giving the artist

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monies from these contributions. Therefore, it would have been obvious to one of ordinary in the art at the time of the invention to require non-virtual financial input upfront in Chacker and provide this money to the artist in order to reduce the financial risk of signing an artist by proving the financial viability of an artist's popularity upfront before investing the money.

12. As per claim 5, Chacker teaches comprising using said funds to produce a record from said funds when said artist is a musician (See column 7, lines 25-55, and column 9, lines 19-45).

13. As per claim 7, Chacker discloses a method further comprising maintaining information on said users, and using said information to market said artist (See at least figure 5, column 9, lines 35-40, and column 13, lines 29-45, wherein a user logs in and retrieves his/her information and wherein the user's email address is used to market an artist).

14. As per claim 8, Chacker discloses limiting the number of user permitted to contribute to said artist (See at least figure 5, wherein users must be registered with the system in order to contribute). However, Chacker and Riffage.com do not expressly disclose limiting the users to a predefined number.

Both Chacker and Riffage.com disclose a tool that offers an emerging artist financial support based on the users' demand for and contributions to the artist. Chacker discusses determining each artist's popularity through the user interaction with said artist. It is well known in marketing to use controls when taking market measurements (penetration, demand, etc.), such as using a defined sample group or a defined time period in order to have a standard for efficient comparisn. Furthermore, it is well known that voting needs to be limited by some condition in order for a contest to end and the results to be tabulated. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to limit the number of users

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interacting with the system of Chacker when determining the leading unsigned artists in order to more accurately choose the best artists by establishing standards and measurable quantities to be used in making a judgment.

15. Claim 9 recites equivalent limitations to claim 1 and is therefore rejected using the same art and rationale above.

16. As per claims 11 and 12, Chacker teaches:

i. in claim 11, making a fund available to the artist to produce a musical record (See at least column 9, lines 10-50, wherein artists that reach the predefined criteria of the A&R representatives are afforded record contracts, marketing, etc. by the system); and

ii. in claim 12, releasing a fund to the artist based on the artist meeting predefined criteria (See at least column 9, lines 10-50, wherein artists that reach the predefined criteria of the A&R representatives are afforded record contracts, marketing, etc. by the system).

However, Chacker does not expressly disclose that the fund comes directly from the users contributions. Riffage.com teaches a method further comprising:

i. in claim 11, making the fund available to the artist to produce a musical record (See reference A, page 1, section 1, reference B, page 1, section 4, and reference C, page 1, section 4, and page 2, section 1, which discloses the artist having access to the fund, thus generating a profit for the artist, and the artist being able to produce a musical record); and

ii. in claim 12, releasing the fund to the artist based on the artist meeting predefined criteria (See reference A, page 1, section 1, and reference C, page 1, sections 2-4, and page 2, section 1-2, wherein a registered artist that makes a profit is entitled to a portion of the funding).

Both Chacker and Riffage.com disclose a tool that offers an emerging artist financial support based on the users' demand for and contributions to the artist. Chacker discloses that the contributions of the users to the artist are virtual financial contributions upfront, and that after popular artists are signed and given funding. Chacker also discloses the systems ability for billing with real money in column 12, lines 40-55. Riffage.com discloses receiving financial contributions upfront before signing an artist for a record contract and giving the artist monies from these contributions. Therefore, it would have been obvious to one of ordinary in the art at the time of the invention to accept non-virtual financial contributions from users in Chacker and provide this money to the artist in order to decrease the costs associated with producing, marketing, and acquiring an artist by receiving the money from the fans of the artist. See at least column 8, lines 1-30, of Chacker.

17. As per claim 13, Chacker discloses a method further comprising returning the selected artist to the pool of artists if artist fails to meet predefined criteria (See at least column 5, lines 50-60, column 6, lines 55-67, column 7, lines 1-25 and 58-67, column 8, lines 1-10, 20-25, and 55-67, and column 9, lines 1-20, wherein the selected artist is returned to the pool if the artist does not reach the predefined level of support as dictated by the A&R of the system).

18. As per claim 14, Chacker discloses a method wherein selecting an artist to be eligible for financial support is based on the artist who attains the largest number of user votes (See at least column 5, lines 50-60, column 6, lines 55-67, column 7, lines 1-25 and 58-67, column 8, lines 1-10, 20-25, and 55-67, and column 9, lines 1-20, wherein the artist is selected for a recording contract based on attaining the largest number of votes).

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19. As per claim 15, Chacker teaches a method wherein selecting an artist to be eligible for financial support is determined by a panel of individuals (See at least column 5, lines 50-60, column 6, lines 55-67, column 7, lines 1-25 and 58-67, column 8, lines 1-10, 20-25, and 55-67, and column 9, lines 1-20, wherein the artist is selected for financial support based upon the panel of individuals initially reviewing the artist).

20. As per claim 16, Chacker teaches a method wherein selecting an artist to be eligible for financial support is determined in part by a panel of individuals and in part by user votes (See at least column 5, lines 50-60, column 6, lines 55-67, column 7, lines 1-25 and 58-67, column 8, lines 1-10, 20-25, and 55-67, and column 9, lines 1-20, wherein the artist is selected for a recording contract and financial support based upon the panel of individuals initially reviewing the artist along with the panel of users of the tool).

21. Claim 17 recites equivalent limitations to claim 1 and is therefore rejected using the same art and rationale above. Chacker further discloses a file server that receives and stores a sample of the artist work (See figure 6, column 5, lines 15-35 and 65-67, and column 6, lines 1-10 and 60-67, wherein the sample is received and stored).

22. As per claim 20, Chacker discloses a system comprising instructions for selecting artists from a pool of artists using inputs from a panel of individuals (See at least column 5, lines 50-60, column 6, lines 55-67, column 7, lines 1-25 and 58-67, column 8, lines 1-10, 20-25, and 55-67, and column 9, lines 1-20, wherein the artist is selected based upon the panel of individuals initially reviewing the artist).

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23. As per claim 21, Chacker teaches a method wherein the number of artists that can be selected to receive financial support from the pool of artists is predefined (See column 8, lines 60-67, wherein the number of artists is at least 50).

24. As per claim 22, Chacker discloses a system for presenting artists to determine market demand for artists comprising a computer programmed having instructions for implementing the method of: receiving and storing work of artists on a file server (See at least column 5, lines 50-60, column 6, lines 55-67, column 6, lines 1-10 and 60-67, column 7, lines 1-25 and 58-67, column 8, lines 1-10, 20-25, and 15-35 and 55-67, and column 9, lines 1-20, wherein user input determines which artist to select from a pool of artists);

dividing said work into categories (See at least figure 6 and column 12, lines 40-45, wherein a genre is defined for the works);

selecting said work from said categories (See at least figure 6 and column 12, lines 40-45, wherein a work is selected from the categories using the links);

elevating selected works into positions that are eligible to receive direct financial support from users, wherein the financial support is money (See column 5, lines 50-60, column 6, lines 55-67, column 7, lines 1-25 and 58-67, column 8, lines 1-25, and 55-67, and column 9, lines 1-20, wherein the artist is selected by users as eligible for financial contributions for said user);

promoting the artists who receive a predefined amount of direct financial contributions (See at least column 9, lines 10-50, wherein the artist are promoted); and

providing users who contributed to artists that did not attain the predefined level of user contributions an option from a group at least comprising:

(a) a refund of their money contribution (See at least column 5, lines 50-60, column 6, lines 55-67, column 7, lines 1-25 and 58-67, column 8, lines 1-10, 20-25, and 55-67, wherein a user can sell their contribution to an artist); and

(b) a redistribution of their money contribution to another artist from the pool of artists (See at least column 5, lines 50-60, column 6, lines 55-67, column 7, lines 1-25 and 58-67, column 8, lines 1-10, 20-25, and 55-67, wherein a user can trade the contribution to one artist to the account of another artist); and

(c) to leave their money contribution undistributed in a non-artist account (See column 7, lines 1-25 and 58-67, column 8, lines 1-10, 20-25, and 55-67, and column 13, lines 29-45, wherein the contributor sells shares and leaves the monies as a balance in a portfolio, the monies not yet associated with an artist). However, Chacker does not expressly disclose that the funds come directly from the users contributions or that the fund, minus a commission, is provided for the benefit of each artist that attains the predefined money level of user contributions.

Riffage.com discloses a method further comprising making available to each artist attaining a level of user contribution funds, minus a commission, from the user's contribution to the artist to produce and commercialize the artist (See reference C, page 1, sections 3 and 4, and page 2, sections 1 and 4, which discloses giving each artist that attains funds on the site some of the money to produce and commercialize their band).

Both Chacker and Riffage.com disclose a tool that offers an emerging artist financial support based on the users' demand for and contributions to the artist. Chacker discloses that the contributions of the users to the artist are virtual financial contributions upfront, and that after popular artists are signed and given funding. Chacker also discloses the systems ability for

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billing with real money in column 12, lines 40-55. Riffage.com discloses receiving financial contributions upfront before signing an artist for a record contract and giving the artist monies from these contributions. Therefore, it would have been obvious to one of ordinary in the art at the time of the invention to accept non-virtual financial contributions from users in Chacker and provide this money to the artist in order to decrease the costs associated with producing, marketing, and acquiring an artist by receiving the money from the fans of the artist. See at least column 8, lines 1-30, of Chacker.

25. As per claim 23, Chacker discloses instructions for limiting the number of positions available to receive financial contributions from users (See at least column 5, lines 50-60, column 6, lines 55-67, column 7, lines 1-25 and 58-67, column 8, lines 1-10, 20-25, and 55-67, and column 9, lines 1-20, wherein the artist positions in the system are limited by a pre-selection process which narrows the number of artists that move into the voting portion of the system).

26. Claim 24 recites equivalent limitations to claim 1 and is therefore rejected using the same art and rationale above

27. As per claim 25, Chacker teaches an article wherein users select and contribute to an artist through a network connection (See at least figures 2 and 4, which discloses a network).

28. As per claim 26, Chacker discloses a computer-implemented apparatus for determining market demand for an artist comprising:

means for receiving and storing works of artists (See at least figure 6, column 5, lines 15-35 and 65-67, and column 6, lines 1-10 and 60-67, wherein the sample is received and stored);

means for enabling users to access the stored works (See at least figures 2 and 4, which disclose enabling users to access the stored works);

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means for receiving user input to elevate artist from the general artist pool (See at least column 5, lines 50-60, column 6, lines 55-67, column 7, lines 1-25 and 58-67, column 8, lines 1-10, 20-25, and 55-67, and column 9, lines 1-20, wherein user input determines which artist to select from a pool of artists);

means for making elevated artists eligible for financial contributions from users, wherein the financial contributions are money (See column 5, lines 15-35 and 50-60, column 6, lines 55-67, column 7, lines 1-25 and 58-67, column 8, lines 1-25, and 55-67, and column 9, lines 1-20, wherein selected works are in a position that is eligible to receive financial support from users);

means for making financial amounts of the system available to artists that meet predefined criteria (See at least column 9, lines 10-50, wherein artists that reach the predefined criteria of the A&R representatives are afforded record contracts, marketing, etc. by the system);

means for providing users who contributed to artists that did not attain the predefined level of user contributions an option from a group at least comprising:

(a) a refund of their money contribution (See at least column 5, lines 50-60, column 6, lines 55-67, column 7, lines 1-25 and 58-67, column 8, lines 1-10, 20-25, and 55-67, wherein a user can sell there contribution to an artist); and

(b) a redistribution of their money contribution to another artist from the pool of artists (See at least column 5, lines 50-60, column 6, lines 55-67, column 7, lines 1-25 and 58-67, column 8, lines 1-10, 20-25, and 55-67, wherein a user can trade the contribution to one artist to the account of another artist); and

(c) to leave their money contribution undistributed in a non-artist account (See at least column 7, lines 1-25 and 58-67, column 8, lines 1-10, 20-25, and 55-67, and column 13, lines 29-

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45, wherein the contributor can sell shares and leave the monies as a balance in his/her portfolio, the monies not yet associated with an artist).

However, Chacker does not expressly disclose that the financial amounts available to the artist come directly from the users contributions.

Riffage.com disclose means for making financial contributions of users available to artists that meet predefined criteria (See reference C, page 1, sections 2, 3, and 4, and page 2, sections 1 and 2, wherein financial contributions are made available to artists that bring in money and are registered with the system. When an artist reaches a predefined level of support from users he/she is automatically sent to a recording label representative. See reference B, section 4).

Both Chacker and Riffage.com disclose a tool that offers an emerging artist financial support based on the users' demand for and contributions to the artist. Chacker discloses that the contributions of the users to the artist are virtual financial contributions upfront, and that after popular artists are signed and given funding. Chacker also discloses the systems ability for billing with real money in column 12, lines 40-55. Riffage.com discloses receiving financial contributions upfront before signing an artist for a record contract and giving the artist monies from these contributions. Therefore, it would have been obvious to one of ordinary in the art at the time of the invention to accept non-virtual financial contributions from users in Chacker and provide this money to the artist in order to decrease the costs associated with producing, marketing, and acquiring an artist by receiving the money from the fans of the artist. See at least column 8, lines 1-30, of Chacker.

29. Claim 27 recites equivalent limitations to claim 1 and is therefore rejected using the same art and rationale above.

Response to Arguments

30. Applicant's arguments with regards to Chacker (U.S. 6,578,008) and Riffage.com (see references above) have been fully considered, but they are not persuasive. In the remarks, applicant's argue that Chacker does not teach or suggest (1) user or financial contributions that are money because Chacker discloses contributions that are imaginary money, (2) funds come directly from the users contributions or that the fund, minus a commission, is provided for the benefit of each artist that attains the predefined money level of user contributions, that Riffage.com does not teach or suggest (3) a money contribution of the present invention because revenue generated by sales is not a money contribution, and that Chacker and Riffage.com (4) are not combinable because systems based on real money and systems based on virtual money are fundamentally different and provide different results and there is no motivation to combine these fundamentally different systems.

In response to argument (1), Examiner respectfully disagrees. Examiner has relied upon Chacker to teach user contributions to an unsigned artist through the use of virtual money (i.e. "imaginary money"), wherein money is defined as a medium of exchange, a means of payment, or a measure of value (See Merriam-Webster.com). In Chacker, virtual money is a means by which the system would measure the value of the artist. Examiner agrees with the Applicant that Chacker uses virtual or imaginary money in the system and points out that she has applied 35 USC § 103 rejections to the limitations where the money is more specifically discussed as a means to provide a fund to an artist. However, the term "money" by itself does not preclude the interpretation of money being real money, virtual money, imaginary money etc. in its broadest

reasonable interpretation. In fact, the Applicant referring to the money of the claimed invention in his remarks as “real money” further supports the different interpretations of the term.

In response to argument (2), Examiner points out that this limitation has been addressed above in the 35 USC § 103 rejections wherein Riffage.com has been relied upon to teach funds coming directly from the users contributions and a fund, minus a commission, being provided to each artist.

In response to argument (3), Examiner respectfully disagrees. Examiner first reminds applicant that Riffage.com was relied upon to teach contributing non-virtual money and giving a fund, minus a commission, to an unsigned artist. Second, Examiner asserts contributing, or to contribute, is defined as to give or supply in common with others, to give a part to a common fund or store, to play a significant part in bringing about an end or result, and/or to help bring about a result. Therefore, a user that downloads from and purchases from an artist of the Riffage.com site is contributing to an artist by giving money in common with others to play a part in supporting an artist and bringing about the result of aiding an artist in becoming signed, making money, staying a band, etc. Helping “starving artist” bands become signed and gain exposure is the mission statement of Riffage.com and thus users of the site know that they are contributing to an unsigned band through their financial purchases. See reference A, page 1, section 1, and page 2, section 1, reference B, page 1, section 4, and reference C, page 1, section 3 and 4, which discuss determining the market demand for an artist by looking at the amount of money users contribute to the account of the artist by supporting said artist by downloads, cd and t-shirt purchases, etc. The limitations of claims 1-26, which recite “contributing to a fund for said artist”, do not include that no merchandise may be received in return. The definition of

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contribute, as explained above, does not exclude this receipt of merchandise from the contribution.

In response to argument (4), Examiner respectfully disagrees. Both Chacker and Riffage.com disclose a tool that offers an emerging artist financial support based on the users' demand for and contributions to the artist. Chacker discloses measuring demand through users' contribution of virtual money to an artist. Riffage.com discloses measuring demand through users' contribution of non-virtual money to an artist. In both cases, when these measurements reach a predefined level, the artist is provided a fund. The fund of Chacker is non-virtual money provided by the system or a third party label, though Chacker further discloses the systems ability to accept and handle non-virtual money in at least column 12, lines 40-55. Riffage.com discloses receiving non-virtual money contributions before signing an artist for a record contract and giving the artist monies from these contributions. However, in both cases the base methodology is the same – measure demand to provide funding. Therefore, it would have been obvious to one of ordinary in the art at the time of the invention to combine Chacker and Riffage.com in order to decrease the costs associated with producing, marketing, acquiring an artist by receiving the money from the fans of the artist. See at least column 8, lines 1-30, of Chacker. Examiner points out that the reference provided by the Applicant further supports the combinability of the references. Applicant quotes Pennock as saying, “Although no real money is changing hands, it seem[s] as if players care enough about their portfolios to make reasonably informed decisions. As a result, the game markets behave in some ways like real markets, showing signs of efficiency and predictive accuracy.” (See “The Power of Play,” ninth paragraph, in Applicant’s attached IDS). Therefore, the methodologies of the references are

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combinable with the main difference being the point at which the money crosses from being virtual to non-virtual.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Beth Van Doren whose telephone number is (703) 305-3882.

The examiner can normally be reached on M-F, 8:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tariq Hafiz can be reached on (703) 305-9643. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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lwd
bvd

November 23, 2004

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